

WEST VALLEY BOARD OF ADJUSTMENT

September 5, 2007

This meeting was called to order at 6:00 p.m. by Chairperson, Necia Christensen, at 3600 Constitution Boulevard.

WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS

Sioeli Uluakiola, Russell Moore, Sandy Naegle, Mark Farnsworth and Necia Christensen

Those Absent: Scott Spendlove

WEST VALLEY CITY PLANNING DIVISION STAFF

Steve Lehman and Karon Jensen

WEST VALLEY CITY LEGAL DEPARTMENT

Nicole Cottle

B-13-2007

Ben VanderMeide

3898 South Hallmark Drive (2665 West)

Mr. Ben VanderMeide, is requesting a variance from Section 7-6-305(6) of the West Valley City Code. This section requires that an accessory building on a double fronting lot be set back a minimum distance of 20 feet from any dedicated right-of-way. The applicant is requesting a variance of 14 feet in order to construct a new detached garage.

WEST VALLEY CITY GENERAL PLAN recommends low density residential land uses.

- The subject property is known as lot 69 of the Wright Subdivision Plat #10. This subdivision was recorded with the Salt Lake County Recorder's Office in September 1959 and is currently zoned R-1-8.

- The applicant is proposing to construct a detached garage in the southwest corner of the subject property. The applicant inquired about this location after expressing concern that the original dwelling was constructed having only a single car carport. The applicant expressed a desire to construct a new garage to house vehicles and other yard equipment.
- The subject property is a double frontage lot because of its location between 2700 West and Hallmark Drive. City ordinance requires that any accessory building be set back from the adjacent right-of-way a distance of 20 feet. Although it is unclear why this requirement exists, staff assumes that the 20-foot distance is intended to help with the aesthetics of the right-of-way.
- A recent site inspection revealed that a number of property owners have constructed accessory garages near the 2700 West right-of-way. Building permits for a number of these structures were issued and variances for others have been granted. That said, each case brought to the Board of Adjustment should be evaluated on its own merits.
- The applicant believes that he is being denied a property right because he is unable to have an enclosed garage as do other residents in the subdivision. Mr. VanderMeide believes that the addition of a garage will improve his property and will not be detrimental to the neighborhood. He has also stated that he will not access the new garage from 2700 West but along the south boundary of his property.
- The subject property has unique characteristics that differ from other properties in the subdivision. The lot consists of 5 sides and has a frontage of only 65 feet. The majority of lots in this phase of the subdivision range from 70-75 feet.
- Should the Board of Adjustment approve the variance, the applicant will be required to obtain the necessary building permits from the Building Division. It should be noted that there is a 5-foot utility easement along the rear property line. The applicant does not intend to build over this easement, but will set the building back 6 feet.
- ORDINANCE SUMMARY:**

Section 7-6-305(6) of the West Valley City Land Use Development and Management Act requires that on double frontage lots or corner lots, accessory buildings shall not be allowed within 20 feet of any dedicated street.

The West Valley City Land Use Development and Management Act Section 7-18-107 outlines the standards or conditions for approving a variance. The Board of Adjustment may grant a variance only if:

Applicant
Ben VanderMeide
3898 Hallmark Drive

Favored
Anna VanderMeide
3904 Hallmark Drive

Favored
Adeyle King
3898 Cheryl

Ben VanderMeide
3898 Hallmark Drive

Mr. VanderMeide explained that he is requesting a variance because he needs a garage to store his vehicles in and keep them off of the street. The only location I can place a garage is in the backyard as a detached garage. The hardship is due to the unusual shape of the property and there isn't enough room along either side of the property. Placing the garage 20 feet from the property line would not leave sufficient useable space and would also waste space behind the garage. The proposed garage would act as a sound barrier and provide needed privacy. He added that he is not requesting access to the garage from 2700 West.

Mrs. Christensen indicated for the record that Mr. VanderMeide has presented the Board of Adjustment information addressing the five hardship criteria for a variance.

Mr. VanderMeide indicated that against the back fence is the best place on the lot for the garage and the best use of the property and makes the access to the back of the garage work well.

Mr. Farnsworth questioned, why with a double frontage are you not wishing to access the garage from 2700 West?

Mr. VanderMeide responded, I don't really see that it is necessary because it is not a place I am going to be using much. It is a place to use for storage and working on cars and I am not going to driving and backing in and out.

Mrs. Christensen questioned, if he asked for 2700 West access would that be more difficult?

Mr. Lehman replied, yes, I believe so and it is probably more of a safety issue. In regards to Mark's question about fire access, the Board has dealt with this issue in past cases and the position of the Fire Department is as long as they have access around the side of the dwelling they are fine with fire access. The Fire Department is concerned if a resident is building all the way to the property line on either side of their dwelling limiting access. In this case, because they do have an opening there would be sufficient access to the back yard.

Mr. VanderMeide addressed the five variance criteria:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.

The unreasonable hardship is associated with land that we own, which also has peculiar circumstances. When this home was built, it did not allow for a two car garage. Only a single carport was constructed. The home was positioned on the lot in such a manner that a two car garage cannot be built.

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.

There are three special circumstances regarding our lot that I would like the Board to consider:

1. **My lot is a double frontage lot.**
 2. **The frontage of 65 feet where the majority of lots in my neighborhood are between 70 and 75 feet.**
 3. **My lot is a 5-sided lot with a unique shape.**
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.

Other properties in our area have two car garages either attached or detached to store vehicles. If not allowed to have a garage, I would be denied a property right that others in my neighborhood have.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

The granting of the variance will not affect the general plan. It will not be contrary to the public interest because no access will be gained from 2700 West. There are other garages along 2700 West that are similar to my request and I do not believe that the public interest would be in jeopardy. In addition, the setback from the sidewalk to my fence line is nearly 10 feet which places the proposed garage further out of public view.

5. The spirit of the zoning ordinance is observed and substantial justice done.

The spirit of the zoning ordinance is observed because I will be able to have a garage and improve my property.

Mrs. Christensen asked if there were anyone present who were either in favor or in opposition to the application. {There was no response}

Anna VanderMeide
3904 Hallmark Drive

Anna VanderMeide stated that she is the applicant's mother and indicated that she is in favor of the proposed variance.

Adele King
3898 Cheryl

Mrs. King indicated that there is a problem on the streets because of cars and trucks. People are in those homes and they are bringing in more and more cars so any time I hear of someone wanting to build a garage and get off of the street I am in favor. If you go down our streets, there are small children that do not understand the safety rules of the street and I am very concerned for their safety.

Discussion

Mrs. Christensen stated that the criteria that the applicant has addressed in his letter gives the Board reasonable explanations for granting the variance.

Motion

Mrs. Naegle stated I move that we approve the variance for application B-13-2007, requesting a 14 foot variance for a detached garage due to the hardship criteria that the applicant has provided for the variance.

Mr. Farnsworth seconded the motion.

A roll call was taken.

Mr. Uluakiola	yes
Mr. Moore	yes
Mr. Spendlove	AB
Ms. Naegle	yes
Mr. Farnsworth	yes
Mrs. Christensen	yes

Motion carries – all in favor

B-14-2007

Value Place Hotel

1650 West 3500 South

General Commercial (C-2) zone, 2.23 acres

Alex Gurski is requesting an appeal to a condition of approval from a conditional use approval for an extended stay hotel located at 1650 West 3500 South. This project has 121 rooms in a 10,680 square foot building that is 50'-7.5" tall. Mr. Gurski is the architect for this project. A hotel is a conditional use in a 'C-2' or general commercial zone. This property occupies 2.23 acres of land. The General Plan designates this property as mixed use or general commercial.

The Condition of Approval that is being appealed is condition number 8 in the attached public hearing minutes. The applicant requested using a fiber cement product panel that looks similar to brick. The Planning Commission wanted to find out more information on the product before agreeing to its use, so, a condition was placed to allow the applicant to submit more information about the fiber cement product before the Planning Commission required the use of true brick. The applicant sent in more information about the brick panel/fiber cement for the Planning Commission to review at a study session. After review, the fiber cement material did not seem to be the most beneficial product for the Planning Commission. They motioned that condition of approval number 8 require true brick on the building rather than the use of fiber cement. The applicant believes that the Planning Commission erred in the determination to use true brick. However, the applicant does not specifically state in his attached letter how the Planning Commission erred in their decision, but will address this err for the Board on September 5, 2007.

When the Planning Commission reviews a conditional use application, they are directed by state law to review the application and to place reasonable conditions on the approval if necessary. A use is conditional because its unique characteristics makes the use incompatible in some areas or compatible only if conditions are required to mitigate detrimental or potentially detrimental impacts. The Planning Commission has to approve a conditional use application if reasonable conditions can be imposed to mitigate any negative effects of the project. For this particular project, the Planning Commission was concerned with the longevity and quality of a fiber cement product for this particular location. The Planning Commission believes this to be a very highly traveled area and somewhat of a gateway into West Valley City. As this hotel would be very visible from two different busy roads, the Planning Commission wanted real brick used on the hotel because of the detail, variation, and aesthetic quality of true brick. Part of the Planning Commission's concern with a brick panel is that although it does resemble true brick, it does not have much variation as it is manufactured in panels, and it has not been around long enough to know how it stands the test of time.

Legal Authority

7-1-103(43) “Conditional Use” means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

7-3-107(7) Planning Commission Powers and Duties

The Planning Commission shall: ... (7) Hear or decide any matters that the City Council designates, including the approval or denial of conditional use permits.

7-7-111 Conditional Use Appeal Procedure

Appeal may be made to the Board of Adjustment by the City or any person aggrieved by a final decision, determination, or requirement of the Zoning Administrator or Planning Commission, regarding a conditional use approval or revocation shall be made to the Board of Adjustment as provided herein.

7-18-105(2) Appeals to the Board

The notice of appeal shall specify the grounds for the appeal and circumstances related thereto. The notice shall allege that there was error in the order, requirement, decision, or determination made by an official or officials in the administration or interpretation of the zoning ordinance. A notice failing to allege such error or specify the grounds for appeal may be summarily dismissed by the Board of Adjustment with or without prejudice. Response to the above requirements shall be set forth in detail in the notice of appeal. The person or entity making the appeal shall have the burden of proving that an error has been made.

Mrs. Christensen asked legal staff to provide a brief summary of how appeals are handled and what the Board needs to do for an appeal.

Claire Gillmor, West Valley City Attorney, went over the statute, 7-18-105(2) Appeals to the Board

The notice of appeal shall specify the grounds for the appeal and circumstances related thereto. The notice shall allege that there was error in the order, requirement, decision or determination made by an official or officials in the administration or interpretation of the zoning ordinance. A notice failing to allege such error or specify the grounds for appeal may be summarily dismissed by the Board of Adjustment with or without prejudice. Response to the above requirements shall be set forth in detail in the notice of appeal. The person or entity making the appeal shall have the burden of proving that an error has been made.

So legally, what the Board will be focusing on tonight is whether or not the Planning Commission erred and that is really the only question that will be appropriately addressed by this Board. In this particular case, it looks as though the Planning Commission through a conditional use application required a condition to use a certain type of material rather than another one. If you will turn to conditional use, under 7-1-103(43) it explains that a land use due to its unique characteristics or potential impacts on the municipality surrounding neighbors or adjacent land uses may not be compatible in some areas and may be made compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

If we go through the minutes of the Planning Commission meeting, I believe that on page #5, under Discussion Item, on the last sentence, Chairman Woodruff goes through his reasons for imposing a certain type of material. Chairman Woodruff indicated he would rather have real brick rather than brick paneling. He said this is a visually important, high quality parcel in the City, surrounded by two major roads. The real brick will force details with the building. The motion made by Commissioner Clayton was passed.

Mrs. Christensen said so we all understand that we are trying to determine whether or not the Planning Commission erred in their decision that they made requiring a particular type of material versus another kind of material as a condition of granting a conditional use.

Mrs. Gillmor responded, and that is going to be limited to whether or not the condition is reasonable. The analysis will not necessarily involve the type of material versus another type of material. The question for the Board is just whether or not the Planning Commission erred.

Applicant
Alex Gurski
19100 Von Karman Ave #550
Irvine, CA 92612

Representative
Chuck Zernikow
12111 W. Merribeau Ct.
Wichita, KS 67235

Representative
Shelly Swan
8621 E. 21st N. #250
Wichita, KS 67206

Representative
Jim Wueste
6659 Peachtree Industrial Blvd.
Norcross, Georgia 30092

Hannah Thiel
West Valley City

Mrs. Thiel indicated that the applicant is requesting an appeal to a condition of approval for an extended stay hotel. This project has 121 rooms in a 10,680 square foot building.

A condition was placed on the approval requiring the applicant to use real brick rather than a fiber cement material. At the initial approval, the Planning Commission didn't feel like they had enough information to approve or deny the use of the fiber cement material. They had the applicants send more information and they reviewed it in a study session and decided that because they don't know exactly what the fiber cement will look like in time, they decided they wanted to stick with real brick because they know how it stands and they know that it is going to be durable and will stay. So, the appeal is for that condition that the applicant would like to use the fiber cement material.

Ms. Naegle questioned legal staff, I was a little confused...she is talking about the brick versus the fiber cement and you're saying that isn't the issue that the Board is looking at?

Mrs. Gillmor replied, the issue that whether or not the requirement for whether the hotel uses brick falls under this definition of conditional use ..."because of its unique characteristics or potential impacts on the municipality, surrounding neighbors, or adjacent landowners may not be compatible." Only extreme conditions are required that mitigate or eliminate the detrimental impacts. So, the analysis is whether or not that specific condition is a reasonable one essentially and whether or not there was an error that this condition is reasonable or unreasonable. That is the threshold question

Mr. Farnsworth questioned, so in other words the requirement of the brick is an unreasonable condition then we would vote in favor of the appeal?

Mrs. Gillmor responded, if the Board makes a determination that the condition imposed reasonably relates to mitigating or eliminating potential detrimental impacts. To clear up any confusion was it reasonable to say it should have been this material instead of something else. Was this requirement reasonable?

Mrs. Christensen said as I read through the minutes there was an indication as to how much masonry was required and it said that they exceeded that amount. I need to know does this qualify as masonry and did they exceed the amount of masonry that would be required by City Code?

Mrs. Thiel responded, yes, City Code requires 35% and speaking to our Zoning Administrator he did determine that this is a masonry product. So, by code it could be used.

Mrs. Christensen questioned who is here for the applicant? Please state your names.

My name is Alex Gurski and the address is 19100 Von Karman Ave. #550, Irvine California 92612. I will let the others introduce themselves and give their address.

Chuck Zernikow, 12111 W. Merribeau Court, Wichita Kansas 67235.

Shelly Swan, 8621 E. 21st N., Suite 250, Wichita Kansas 67206,
and I am here representing Value Place

Jim Wueste, and I am with the fiber cement manufacturer, Nichiha. The business is
located at 6659 Peachtree Industrial Blvd., Norcross Georgia 30092.

Alex Gurski
19100 Von Karman Ave.

Mr. Gurski stated that originally with our application we weren't proposing to have any brick and so we didn't meet the Code. Staff highly recommended that we use a cement product so we added the required amount, 35% to the primary façade and 50% on the other facades. I believe the issue with the Planning Commission is that they didn't feel that it was a masonry product and we did. The Zoning Administrator has agreed that it is a masonry product also and that is why we felt that the Planning Commission erred. Our manufacturer, Jim, is here tonight to explain or answer any questions that you might have about the product. There was some concerns about durability and sustainability of the product and it is under warranty for 50 years. The product has been around for many years and has stood the test of time.

Chuck Zernikow
12111 W. Merribeau Court

Mr. Zernikow said that the reason this is considered a masonry product is that it has a very low absorption rate for moisture and will dry out quicker than other products. Also, it won't rot and lasts longer, hence the 50 year warranty.

Mr. Moore questioned, what is the moisture absorption rate?

Mr. Zernikow replied, it is .001. It is really how it is made. This is a pressed product rather than a lot of other fiber cement products are a **latex product?**. Essentially, it starts out around 3 inches thick and is pressed. The product won't accept moisture because it is pressed. All of the wood strains, which is the only thing that accepts moisture, are kept separate and are individual pieces. It is not one inner sheet.

Mr. Moore questioned, what is the diameter size of the wood fibers and what is the percentage by weight of the wood fiber?

Mr. Zernikow replied that he did not have that information.

Mr. Moore questioned, are you aware that in this climate we have over 3,000 thermo cycles per year? I notice that you are from the south. Has this been tested for thermal cycles of this magnitude?

Mr. Zernikow responded, I believe so. The company is based out of the south, although we are basically a Japanese company and are all over the world. This material has been used in almost every climate in the U.S. from the upper Midwest to down in Phoenix over to the south and the northeast.

Mr. Farnsworth questioned, for how long?

Mr. Zernikow indicated that this is a 50 year old company and has been in the U.S. for ten years.

Mr. Moore responded, the reason I bring this up is that the altitude here in winter conditions are the absolute worst for concrete than anywhere in the U.S. with this latitude and this elevation.

Mrs. Christensen noted that this is Mr. Moore's specialty.

Mr. Moore commented, yes that is my specialty and I do exteriors. That is why I am so interested in the absorption rate and the amount of fibers.

Mrs. Naegle stated, let me paraphrase what I believe I am hearing you say was the error. The error was that the Planning Commission stated that this product was not masonry and that would be the error.

Shelly Swan
8621 E. 2100 - Street N

Ms. Swan indicated that when she attended the Planning Commission hearing, the Chairman stated that he did not believe this was a masonry product and thought that it was a wood product and that is the reason the Planning Commission study session came after.

Mrs. Thiel responded, that is why the Planning Commission wanted more information about it because at the public hearing they didn't know if it was a masonry product. At the study session the Planning Commission acknowledged that yes, this is a masonry product, but indicated that they still wanted the real brick and that is in the minutes for the study session.

Mrs. Naegle questioned, what does the Code say about masonry and is that information in our packet?

Mrs. Gillmor responded, no, it is not in the packets because the determination is whether or not the condition of the real brick that was imposed fits within the conditional use...that would be the determination. It might be helpful to start with the notice that was sent in and make a determination. The first part would be to start with the applicant's letter which was dated August 22nd.

Mrs. Christensen remarked, the letter states that the Planning Commission denied the proposal to use Nichiha brick as an acceptable exterior material and they have requested an alternate material be used in lieu of Nichiha. So, that is what they are saying the error is.

Mrs. Gillmor stated, so let's go back to our statute on appeals to the Board. The first determination that the Board should make is whether or not a notice that is failing to allege an error should be summarily dismissed or whether or not the Board is going to agree to go ahead and make a determination. I think we have already done that, but it is useful for the record.

Mrs. Christensen said that obviously they did suggest that the error was made by requesting one product over another.

Mrs. Gillmor questioned, in the notice?

Mrs. Christensen questioned staff, was there any other notice received?

Mrs. Thiel replied that the letter is the only correspondence that staff received.

Mrs. Christensen stated, and yet, you granted their right without suggesting the change that they needed to do something else?

Mrs. Thiel replied that the letter indicated that they would address what the error was at this meeting.

Mrs. Gillmor indicated that it doesn't appear on the notice that there was any explanation of what the error was. So, the Board can make that make determination of whether or not it should be summarily dismissed and then go ahead and move on. For the record it is useful to state that there was no specific reasons for the error in the notice and go ahead and move on to the next part of your analysis.

Mrs. Christensen responded that I can see what you are saying. I think it was implied, but not specified.

Ms. Naegle said she felt like she was getting conflicting opinion from staff.

Mrs. Gillmor read to the Board the statute stating....response to the above requirements shall be set forth in detail in the notice of appeal.

Mr. Farnsworth acknowledged that there is no detail.

Mrs. Christensen noted other than they specifically say what they're concerned about. The use of the brick versus the fiber cement material.

Mr. Farnsworth explained that the applicant needs to specify the detail of what they are alleging that the Planning Commission erred on.

Mrs. Swan responded, you stated that in the minutes from the study session that the Planning Commission agreed that it was a masonry product. I am not really seeing in the minutes where it says Planning Commission members agree that this is a masonry product. It does state that Hannah stated that the Zoning Administrator had reviewed the specifications and determined that the product is indeed a masonry product. But further down it doesn't say anything about the fact that in the study session that the Commissioners agreed as well that this is a masonry product.

So, that is where our error is coming into place because we feel that the stipulation for the real brick is that the Planning Commission is considering brick as masonry versus what we are proposing to use and that is where we see the error is.

Mrs. Christensen clarified and that is implied, but not specified in the letter.

Mrs. Gillmor stated that the second part of your analysis is whether or not the imposition or the condition of using real brick was a condition that is reasonable to mitigate or eliminate the detrimental impacts. That is the point of a conditional use....unique characteristics or potential impacts on a municipality. In layman's terms, we state that essentially you can be here, but because of these unique characteristics and in order for the business to be here we feel that you need to meet these conditions. The Board's responsibility is to determine whether or not those are reasonable to mitigate or eliminate the detrimental impacts that have been identified in the minutes.

That is the analysis....not whether or not the material that they are suggesting under our code qualifies as masonry. The threshold question for the Board on appeals is "did the Planning Commission error in their interpretation when they imposed this condition on the hotel?" Is that reasonable in light of the potential impact on the municipality...and is it related to mitigating or eliminating the detrimental impacts?

Mrs. Christensen stated, you have listed the appeals to the Board as the last and therefore, I believe the least important item that has been listed in our preparation material. Therefore, I am going to suggest that as a Board, we will first hear the rest of the discussion and the appeal to the Board may or may not be an issue. I just don't feel comfortable to summarily say that because they didn't address their letter correctly we are not going to hear the application.

Ms. Naegle noted that when someone decides to make an appeal they have probably not read the City's Code. I would hope that if they called staff, they would have explained the rules and regulations and explain what they need to do. I know staff usually helps citizens when they come in to the City and want to do a variance. As a resident, I wouldn't know what was required, and as a company I might not know what was required. Was the appellant helped to understand what they needed to state? In my opinion that is part of the City's responsibility to assist people that are wanting to do business in West Valley City.

Mr. Moore stated, so the question is "was the applicant informed of the process?"

Mrs. Thiel responded that she did help with the application and told them that they needed to present why the Planning Commission erred and that they needed to provide a letter indicating what specific issue they believe the Planning Commission erred in. My interpretation of the letter was that they would present that today.

Mrs. Gillmor said that my recommendation would be that you place in the record what the notice did include and then move on.

Mr. Moore questioned, were they given a copy of Section 7-18-105?

Mrs. Thiel responded, yes, they received the whole ordinance.

Mrs. Christensen stated, my recommendation would be that the Board hear the appeal and acknowledge that the applicant didn't specify what their specific concerns were should there be further questions. Obviously, they were given help, but I would have read this and interpreted it exactly the same way.

Shelly Swan remarked that she understands that there are legal reasons of what we can state, but imposing the real brick condition on this application becomes a huge economic impact on our construction costs. Should real brick be required, there is a strong possibility that the hotel may not be able to proceed at this site. I believe that this particular site is considered to be in a blighted area. The building that we have presented with the Nichiha paneling is going to overcome any blighted area that these three lots are considered especially in this specific area and so, that is our biggest concern. If we are

required to have real brick on this building, there is strong potential that we will not build in West Valley City on this particular site.

Mr. Uluakiola questioned, is that was due to money issues?

Ms. Swan responded, yes economics. It is a masonry product and what we are reading in the minutes is that Commissioners said that they didn't believe it is a masonry product, and that they wanted us to use real brick. So, it is our understanding that this was not an approved masonry product by the Planning Commission. Therefore, our appeal is that we believe this is a masonry product and that we then meet Code requirements.

Mrs. Christensen explained that the Board cannot consider financial hardships. We have to determine did the Planning Commission error and if they erred, the Board will need to overturn their decision. Let's go back to the original question, are we going to hear this? [She asked each of the Board members and they decided to hear this application

Mr. Gurski stated, I was under the impression that the Planning Commission didn't recognize this as a masonry product and at their study session, they did recognize it as brick. I was not aware of that until today. So, I am happy that the Planning Commission does recognize it as a masonry product.

Discussion

Mrs. Christensen stated, on page 15 of the August 8th minutes, Nicole indicated (as it shows in the center of the top paragraph) that if the brick panel is not a true masonry product, that the alternative condition would be full brick in the areas specified. That was Nicole Cottle's indication, who is our City Attorney. As we go down to page 5 of the August 5th study session, Nicole indicated that because this is a conditional use the Commission can require real brick if they so desire. She reminded that the ordinance says brick, stucco, or other masonry products are allowed. So, I believe it is fair to say that if we look at what she first said... that the alternative, if it is not a masonry product, would be full brick (on page 15).

In this paragraph, Nicole indicated that because this is a conditional use the Planning Commission can require real brick if they desire. So, here we are back at the crossed purposes again. First Nicole states, "if it is not masonry, then they can require brick"... and then later she states "that because it is a conditional use masonry can be required."

Mrs. Christensen stated, I understand that the question is, did the Planning Commission error. This is considered a blighted area and as I read the minutes, one of the Commissioner's stated...then they can just take their business somewhere else and the

City can get something better here...it may well be that is just as bad as stating we don't consider this masonry, and even if we do consider it masonry, we want full brick.

Mr. Moore said that he did not believe that the Planning Commission erred. This is a pressed cement product which means that it is pressed under about 50,000 pounds per square inch to squeeze the water out. Masonry is either fired clay which is to cure it or masonry is an auto clay or heat cured product that enhances the strength of the formation of tobamorie.(the crystals that hold cement together which is much more durable). This product has organic materials in it that are not inert which means that eventually the weather here will get to it. I think we should realize that and make the correct decision. I don't believe that it is a masonry product.

Mr. Farnsworth commented that the Planning Commission could see a difference between the two products.

Mr. Moore responded, right, and they looked at it from a non-technical point... it is not a masonry product and it has organic materials. It may last ten years and it may last longer, but it is not a true masonry product. I don't believe that they erred.

Mrs. Christensen stated, that it is interesting as we read in the minutes, Nicole suggested that this product might look more attractive in the beginning, but I don't believe that is something that she could say legally and have it as a recommendation.

Mrs. Gillmor stated that it might be helpful for the Board to analyze their reasons for imposing those conditions.

Mrs. Christensen responded, I don't believe there reasons were that great. I am reading their review on this page. All they are saying is that they would prefer brick.

Mr. Moore noted, which the Planning Commission may impose.

Mrs. Christensen remarked, but they are not stating why they would prefer brick. As I am reading from what the Commissioners said, they are not happy with the features and don't consider that the building is particularly attractive and they consider this a visually important, high quality parcel of land. I do believe that there are errors, but I don't necessarily believe they are the same as what they have chosen as the error.

Mrs. Naegle stated, the Planning Commission's job is to make sure that the City ordinances are met...is that correct?

Mrs. Gillmor responded that is part of their function.

Mrs. Naegle stated, and this conditional use...is this similar to the conditional uses that the Board sees? What is the difference between the Planning Commission's conditional use and the conditional uses that are heard by the Board?

Mrs. Gillmor responded, clearly I have not communicated this as well as I would like to. I believe the easiest way to think of it is that you have a project in an area with some unique characteristics. It doesn't necessarily fit, but maybe with some conditions it can fit and it can be great. That is what I would illustrate as a conditional use. We believe it doesn't quite fit here for x number of reasons, but maybe it can, if we make some tweaks. In legal terms, what those tweaks mean are conditions... and by law you can only impose conditions that are going to mitigate or eliminate detrimental impacts. So, why doesn't it fit? Clearly there are some detrimental impacts and what are those impacts? How do we correct those impacts? We impose conditions related to that use that will eliminate or mitigate those impacts.

Mr. Farnsworth noted, I see it from an individual standpoint. For example, if I went before the Planning Commission and said I want to build a second level to my home they could impose certain conditions to approve that second story structure. So, to approve the construction of this hotel the Planning Commission has placed conditions on the building.

Mr. Lehman said the only option you have in the appeal section states..."after hearing the appeal, the Board of Adjustment may reverse or affirm wholly or partly and modify the requirement when the decision or determination appealed from and may make such requirements or conditions."

As I have listened to the discussion tonight, the conditional use is something that is innate to the Planning Commission. Essentially, legal staff has advised you based on State law that conditional uses are essentially permitted uses with conditions. So, the Planning Commission doesn't necessarily deny the conditional use. They are denying essentially a specific element of their product and saying for us to approve your product, we believe that real brick should be used instead of the fiber cement product. Now whether or not fiber cement is a true masonry product is not the point....as long as it is reasonable, they could look at one type of brick versus another brick and choose what type of brick the applicant should be required to use. So, I am not sure whether this product is truly masonry or not and that is not the issue. The issue is it a condition that the Planning Commission set forth and felt strongly that real brick should be applied to the structure.

Mrs. Christensen stated, I thought the Planning Commission erred in saying that this isn't a good product when it is a good product. I thought they erred in stating that all of a sudden they considered this a vital gateway to the City and it has to be perfect when three or four months ago it wasn't a big deal where the signs were.

Mr. Lehman said that was a completely different issue.

Mrs. Christensen said, but now that I hear what you say about the difference in the product... that they did not have that information, but we do and it makes it more difficult for me to say that they erred. I want this to be completely discussed so that there is no legal appeal, but that doesn't necessarily mean that we can avoid that. I want to make sure that we are thorough in our discussion and our understanding.

Mr. Farnsworth questioned, isn't there a requirement for a specific amount of masonry?

Ms. Naegle responded, and they said that this did meet the ordinance.

Mr. Moore said, Nicole indicated that was within the Planning Commission's prerogative to require masonry brick.

Mrs. Christensen said, Nicole did not believe that requiring real brick would be a problem with this conditional use application.

Ms. Naegle replied that it sounds like it would be a big problem to the applicant.

Mr. Moore responded, I believe that she meant that it would not be a legal problem.

Mr. Lehman said I would like to offer two observations from a staff perspective. I was the staff person who took the variance to the Board of Adjustment for signage and I think that Russ is correct. I don't think the signage and this application are related at all. Simply positioning the building back was relevant to getting the signs that they needed. So, I would probably caution you there on whether they erred in that issue.

Ms. Naegle responded, I live in West Valley and I drive by that area and it is not a nice area of town. I think that the hotel that is being proposed is an appropriate use for that area. I believe that this treatment is an appropriate for this hotel and makes sense for what type of uses are in that area. The question I keep coming back to is "is it an error to require brick?" Apparently, that is the Planning Commission's right to impose brick.

Mrs. Christensen said the question that I have regarding the error is that Nicole stated that if it isn't a true masonry product, then the alternative would be real brick. That is what she said earlier and at the study session it was implied that this was a true masonry product and the Planning Commission still required brick and Nicole said that would be okay.

Mr. Moore questioned staff, specification number 8, in their motion...specification for brick paneling shall be submitted to the Planning Commission for their review at a future

study session. If the brick paneling specified is not approved, real brick must be placed on the building. Do we have access to that specification?

Mrs. Christensen responded, that is the question...did it meet the specifications required?

Mrs. Thiel responded that they were given to the Planning Commission.

Mr. Moore stated, here is what I see as the determining information here. Hannah stated that the Zoning Administrator had reviewed the specifications and determined the product is indeed a masonry product.

Mr. Lehman said I do not know if the minutes from the Planning Commission are verbatim or not. I think your responsibilities are in evaluating whether the Planning Commission made an error. In my opinion as staff, it doesn't matter whether the Planning Commission believes this is a masonry product or not. They can say "we believe it is a masonry product, but we're still going to require the brick" and that is within their powers. Just because a masonry product is being proposed doesn't mean that will be approved. The Planning Commission still has the discretion to say "in our opinion we believe this is a superior product" and I don't know that they have to substantiate why they're stating it has to be real brick. They never substantiate on a condition of approval....it is their prerogative to say we believe that these are conditions that will make this project work and that is just my observation.

Mrs. Christensen responded, then they are not held to the higher standard that the Board is.

Mr. Lehman replied, no. When you say higher standard...you are a quasi judicial body when you review a variance and are obligated to evaluate a certain set of rules that State Law sets forth. The Planning Commission does not have that same standard. They have a standard that needs to be reasonable, needs to be fair, and they are not held to that same legal standard.

Mr. Moore said, I don't believe they erred and I believe it is within their discretion to require masonry which is brick.

Mrs. Christensen questioned, is that going to mitigate or eliminate detrimental impacts? Conditional use means a land use that because of its unique characteristics or potential impact on a municipality, surrounding neighbors, or adjacent land uses may not be compatible in some areas or may be compatible only if certain conditions are required to mitigate or eliminate detrimental impacts. So, they are implying that real brick is going to mitigate or eliminate detrimental impacts to the land use, the neighbors, or the municipality. They have the right to make conditions, but is this condition the right

condition? Is it mitigating or eliminating detrimental impacts to the neighbors, the adjacent land use or the City?

Mr. Moore responded, I say yes.

Ms. Naegle said, I didn't know it until you just read that. They can place conditions, but I don't think that was required to mitigate or eliminate detrimental impacts.

Mrs. Christensen said, I am going to be the devil's advocate. At this point, I agree with you. As we go through the minutes, there are things that they ask...like would you set aside some money for taking off graffiti and would you do this or would you do that. So, they were concerned about detrimental impacts to the City, however the same exact things that they are concerned about... the detrimental impacts to the community are the exact same things that would be no matter whether it was brick, a cemented product or if it was wood. The things that they discussed in all of the meetings before they made their decision are not specific to brick or their product and then they impose brick.

Mr. Moore stated, I think the Board needs to narrow it down to the specific error that was made.

Motion 1

Russell Moore stated, I would make a motion in the matter B-14-2007, Value Place Hotel, that the Planning Commission did not error in their decision to require brick.

Motion dies - lack of second

Motion 2

Sandy Naegle stated, in the appeal, B-14-2007, Value Place Hotel, I move that the Planning Commission erred in their conditional use requirement of using real brick for the following reason. The Nichiha product would mitigate or eliminate the detrimental impacts on the City as well as using real brick.

Mr. Uluakiola seconded the motion.

A roll call was taken.

Mr. Uluakiola	yes
Mr. Moore	no
Mr. Spendlove	AB

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Mr. Farnsworth	no
Ms. Naegle	yes
Mrs. Christensen	yes

Motion carries – majority vote

Mr. Lehman read the appeal rights into the record and stated that the City has 30 days to appeal to District Court.

OTHER

There being no further business the meeting adjourned at 7:30 p.m.

Karon Jensen, Executive Secretary